

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Donald Mullen on April 26, 2006

DATED: May 31, 2006

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On April 26, 2006, Carolyn Miller, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Donald Mullen. Mr. Mullen was represented at this interview by his lawyer, Thomas Zaccaro, of Paul, Hastings, Janofsky & Walker LLP. Also present were Rahul Khona and Samer Rezkalia of KPMG, and Raymond Sarola of Willkie Farr & Gallagher LLP. The interview took place in a conference room on the 3rd floor of the City Administration Building in San Diego, and lasted approximately one hour.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Mr. Mullen, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

### ***Warnings***

Ms. Miller informed Mr. Mullen that she represents the Audit Committee and not him personally, and therefore, the interview is not covered by an attorney-client privilege between the Audit Committee and Mr. Mullen. She stated that information provided by Mr. Mullen may be made public in the Audit Committee's report, or provided to the government, after which time it would be likely that any privilege attaching to the interview memoranda would be lost. Ms. Miller told Mr. Mullen that information he provides will not be shared with other witnesses and asked that he not disclose the substance of this interview to others who are yet to be interviewed.

### ***Background***

Ms. Miller asked Mr. Mullen to explain his educational and employment history. Mr. Mullen graduated from high school and in 2000 earned a Certificate in Community Economic Development from San Diego State University. He earned this Certificate by participating in an eight-month program designed to offer experience dealing with Business Improvement Districts in San Diego involving classes on Saturdays and alternate Mondays.

Before coming to work for the City, Mr. Mullen was the Executive Director of the College Area Development Corporation, a community improvement organization. While working for this organization, Mr. Mullen interacted with Council members and their staff. He recalled meeting with Councilmember Judy McCarty and with various staff members for

Councilmember Madaffer, including Aimee Faucett, Dan Coffey, and Chris Madder (phonetic). Mr. Mullen stated that he interacted with Councilmember Madaffer's staff regarding maintenance and police issues in the Seventh District. Mr. Mullen stated that he attended Council meetings occasionally both to observe the discussion and to testify on funding for Business Improvement Districts.

Ms. Miller asked Mr. Mullen how the College Area Development Corporation was funded, and he responded that it was mostly funded with City subsidies which were approved by Council resolutions. He explained that under state law business taxes are collected by the City and put into a dedicated fund, and Business Improvement Districts are reimbursed from this fund for their expenditures.

Mr. Mullen stated that he first met Councilmember Zucchet when Mr. Zucchet was a Council Representative for Councilmember Valerie Stallings. Mr. Mullen served as Mr. Zucchet's campaign manager when Mr. Zucchet ran for City Council, and was the Senior Policy Advisor to Councilmember Zucchet from 2002 until 2005, when Councilmember Zucchet resigned. Mr. Mullen remained with the District Two staff from December 2005 until a new Council member arrived in July 2006. At that time, Mr. Mullen went to work as Chief of Policy for Councilmember Madaffer, who had been overseeing Districts Two and Eight.

During the time he worked for Councilmember Zucchet, Mr. Mullen focused on the Downtown community and Redevelopment issues generally. He worked with the Center City Redevelopment Area and handled the allocation of community development block grants and other small business issues. He explained that every staff member had a community that they served, and issues in which they specialized. Mr. Mullen did not recall how many staff members served under him, but noted that although the staff members had different titles, "we all did the same work." All staff members, except for assistants and receptionists, functioned in policy roles.

Mr. Mullen stated that he usually reported directly to Councilmember Zucchet, but sometimes reported to his Chief of Staff, Michael Coleman. It was Mr. Coleman's responsibility to forward emails to the staff member responsible for that issue, so Mr. Mullen did not review Councilmember Zucchet's emails unless they were forwarded to him by Mr. Coleman.

Ms. Miller asked Mr. Mullen if he had any interaction with City agencies in his official capacity as Senior Policy Advisor. Mr. Mullen responded that he dealt with Redevelopment, the CCDC (Centre City Development Corporation), the Housing Commission, and the Convention Center. Ms. Miller asked if he interacted with the City Manager's Office, and he responded that he did. He noted that the City Charter prohibited Council staff from calling City employees directly, so when he had a question he went to the Assistant City Manager that oversaw the relevant City department. Mr. Mullen could not recall specifically the issues that he discussed with the City Manager's Office, except for an instance regarding a request of the City by the company PetCo to name a street after it. Ms. Miller asked Mr. Mullen if he interacted with the City Attorney's Office and he responded that he did occasionally. He stated that Councilmember Zucchet's staff was constantly writing resolutions, which were reviewed by the City Attorney's Office. Mr. Mullen explained that within the City Attorney's Office, Judy Bagwell handled Council resolutions and Lisa Foster was assigned to

Councilmember Zucchet's office. If he needed to speak with someone at the City Attorney's Office, Mr. Mullen stated that he would have contacted Ms. Foster. Mr. Mullen did not recall any specific issues that he discussed with the City Attorney's Office. Mr. Zaccaro stated that most of the interaction between the Council members and the City Attorney's Office took place in closed session.

Ms. Miller asked Mr. Mullen if he was aware of the requirements for holding closed session meetings, and he responded that he was not. He recalled that closed session meetings were held regularly, but staff were not allowed to attend. He speculated that the City Manager might have attended, as well as individuals who were invited by the Council. Mr. Mullen stated that staff did not prepare Councilmember Zucchet for closed session meetings, and stated that he had "no idea" how Councilmember Zucchet received information on topics discussed in closed session.

Mr. Mullen prepared Councilmember Zucchet for items on the agenda for open Council meetings and regularly attended these meetings to "staff" the Councilmember. This involved discussing issues with the Councilmember and retrieving documents from the office. Ms. Miller asked Mr. Mullen if there were any Council members that Councilmember Zucchet got along with better than others, and Mr. Mullen responded that Councilmember Zucchet got along well with everyone. He stated that Councilmember Zucchet would meet with other Council members outside of Council meetings to discuss issues, and all staff members had electronic access to his GroupWise calendar.

Ms. Miller asked Mr. Mullen if he knew how to get an item on the Council docket. Mr. Mullen explained that he would have gone to the City Manager with a docket request or initiated a "1472," which was a routing document to put items on the Council docket. Mr. Mullen attended "docket briefings," along with other members of Councilmember Zucchet's staff, when issues that he was interested in were being discussed. He stated that he decided himself which meetings to attend.

### ***Pension Issues***

Ms. Miller asked Mr. Mullen if he was aware of the Blue Ribbon Committee. He responded that he did not understand the question; he was aware of Blue Ribbon Committees in general, but did not recall hearing of one when he worked in Councilmember Zucchet's office. Ms. Miller asked if he was aware of MP-2 when he worked for Councilmember Zucchet. Mr. Mullen replied that he did not recall exactly when he became aware of MP-2, but thought it was later in Councilmember Zucchet's term, sometime in 2003 or 2004. Mr. Mullen stated that he was not assigned to pension or retirement issues. He recalled sitting in on a Rules Committee meeting in 2003 that discussed a report on the pension system, written by the CERS Board or the City Manager. Ms. Miller asked if this discussion concerned the Pension Reform Commission, and Mr. Mullen said no. Mr. Mullen stated that he had no involvement with Councilmember Zucchet's personal pension benefits.

Ms. Miller asked Mr. Mullen if he was involved in the disclosure process, and he responded that he did not understand the question. Ms. Miller then asked if he had ever looked at a bond disclosure. He did not remember looking at a bond disclosure, but noted that it was possible that "one came around." Ms. Miller asked if he had looked at the CAFR

(Comprehensive Annual Financial Report) and he responded that he might have, but did not recall. He stated that the budget was divided up by department, so no one looked at the whole budget at once. Mr. Mullen explained that there were always budget concerns, but did not recall any concerns specific to pension issues. Mr. Mullen stated that he did not have any interaction with CERS staff.

Later in the interview, Mr. Mullen stated that if a bond issuance related to development in his district, bond disclosure documents would arrive in the packet of materials that came to Councilmember Zucchet's office on Wednesdays. Mr. Mullen noted that there were only a few days to review these materials before a vote on Monday. He stated that he did not understand the technical issues discussed in the bond documents and did not ask anyone to clarify these documents for him. He did not recall any discussion in Councilmember Zucchet's office regarding disclosure.

### *Other Issues*

Ms. Miller asked Mr. Mullen if he had heard of Diann Shipione (CERS Board Member), and he responded that he had heard of her, but did not know her personally. Mr. Mullen did not recall any discussion in Councilmember Zucchet's office concerning Ms. Shipione's pension funding allegations. Mr. Mullen recalled attending a Council meeting where Ms. Shipione spoke, but he said she did not prepare any information for Councilmember Zucchet regarding her allegations.

Ms. Miller asked if Mr. Mullen had any involvement with wastewater, and he replied that other staff members were responsible for this issue.

Mr. Khona asked Mr. Mullen for the time when he first became aware that the pension system was underfunded. Mr. Mullen repeated that pension was not his issue, and stated that he learned of the underfunding sometime in 2003. He did not recall if he first learned of this issue in his personal or professional capacities. Mr. Mullen did not recall taking any action once he learned of the underfunding.

### ***Remediation***

Ms. Miller asked Mr. Mullen if he had any suggestions for remediation. Mr. Mullen did not have any specific suggestions, other than noting that Council members and their staff were only given a short period of time to read technical documents. He stated that the City was in a transition to having an independent budget office, which would allow people who had more technical experience to evaluate budget issues.

Mr. Zaccaro stated at the end of the interview that he wanted to request an opportunity to make a short presentation to Willkie Farr and the Audit Committee to present the Council member's point of view on these issues. Ms. Miller responded that she would take this offer under consideration.

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**Donald Mullen**  
**No Interview Exhibits**